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## SOME FRENCH COMMUNES, IN THE LIGHT OF THEIR CHARTERS

THE communal charters have long been a source of trouble to students of the towns of medieval France. They have been regarded in different ways by successive generations, but the general decision has been that they cannot be fully understood: that however plain many details and some larger points may be, on the whole they are deformed, disordered enumerations, where the most diverse subjects are begun but not completed, and where obscurities, omissions, and sometimes contradictions abound. Since even such careful and experienced scholars as Monsieur Giry and Monsieur Luchaire have taken this view,<sup>1</sup> it may seem unreasonable to attempt to bring any new light to the subject, at least without new material. Nevertheless, by the aid of what others have done and with some change of method, I have ventured to try again to read these documents as they seemed to the men who gave and received them. And if I have succeeded better than those before me, it would appear not only that we shall have to modify present opinion in regard to the form and content of at least many of the charters, but also that by looking at the communes through glasses thus readjusted we may get a little clearer view of such associations, especially as to their early aims and business. The charters, far from being unordered collections of numerous unexplained matters, are, oftentimes at all events, logically arranged and intelligible solutions of a few problems in local conditions; and the communes, in many instances at least, had as their main function to aid in the maintenance of law and order—yet acted, be it added, not exactly as a public institution, as a modern town government, but rather as a private corporation, devoted less to the town as such than to the personal interests of its members. The foundation for these conclusions may be seen in a rather full analysis of the charter to the commune of Beauvais and in shorter analyses chiefly of the concessions to men of Soissons, Laon, Amiens, and Noyon.<sup>2</sup>

The common folk living at Beauvais in the eleventh and twelfth centuries doubtless had much to complain of at the hands of the

<sup>1</sup> See Luchaire, *Les Communes Françaises*, 135; also Giry and Réville, in Lavisse and Rambaud, *Histoire Générale*, II. 442.

<sup>2</sup> At another time I purpose to deal with some of the communes not treated in this study.

nobles and lords of the town. Upon some matters, it would appear, they were in so serious plight that radical steps to secure redress seemed necessary. It must have been in connection with such steps that the commune they had among them sought and obtained its charter,<sup>1</sup> a document evidently designed to be a written record of arrangements to secure better conditions. It took the form of a series of short statements on numerous specific points; and when these statements are read one after the other as so many settlements of questions at issue, they seem often enough to have little or no coherence. Back of them, however, in the minds of the persons who were giving and receiving them, it appears there were a few general and controlling purposes, a few inclusive questions about which the shorter settlements grouped themselves in a natural and logical manner; so that the charter, when read with this in view, becomes quite coherent and orderly.

Apparently the foremost of such questions among the men of Beauvais was how to have protection against violations of the law, how to secure better conditions with reference to crimes; for the greater part of the charter — Articles one to fourteen<sup>2</sup> — is concerned with this subject. And in the field of crimes, apparently the chief desire was to be free from acts of violence; for the first provisions<sup>3</sup> of the charter are evidently devoted to measures against such troubles. Doubtless the burghers had often been maltreated and had gotten no justice for it; but henceforth, "All *homines*, in the town and in the suburb, on whosoever land they live, will swear the commune," unless excused,<sup>4</sup> and they will all aid each

<sup>1</sup> I have used the texts in Labande, *Histoire de Beauvais* (Paris, 1892), *Pièces Justificatives*, VIII. and IX.

<sup>2</sup> In all there are seventeen articles in the confirmation by Louis VII. and twenty-one in that by Philip Augustus.

<sup>3</sup> Articles 1-6.

<sup>4</sup> Articles 1 and 2: *Universi homines, infra murum civitatis et in suburbio commorantes, in cuiuscumque terra maneant, communiam jurabunt; nisi forte ex consilio parium et eorum qui consilium juraverint, aliqui remanserint.*

*Alter etiam alteri, infra firmitates ipsius ville, recte secundum suam opinionem, auxiliabitur.*

It is customary to interpret these statements as more or less separate from each other, — one prescribing who should be members of the commune, the other that there should be solidarity among them, — and certainly as having no more special relation to the next articles than to others at the middle or end of the charter. I take it, however, that although what each of them says may be taken as in and of itself true, as a matter of fact they were both written here with special reference to the provisions immediately following in regard to redress against injuries: *Et quicunque forifecerit homini qui hanc communiam juraverit, etc.* One support for this interpretation is the connection in which the statement about aiding each other appears in the charter to the commune of Soissons: *Infra firmitates civitatis Suessionensis, alter alteri recte secundum suam opinionem auxiliabitur et nullatenus patietur quod aliquis eorum aliquid auferat, vel ei talliatam faciat, etc.* (Charter of Soissons, Art. 1. In Labande, p. 272.) In this instance the two points are brought together in the same sentence.

other according to their best judgment, within the town walls. And if any of them suffer harm and can not secure justice by the regular channels, the officers of the commune will take justice upon the body and goods of the offender, unless he should give compensation for his misdeeds.<sup>1</sup> If the offender find a place of refuge, the officers of the commune will demand satisfaction from the master of the refuge, and if he should refuse they will take it upon his goods and his men.<sup>2</sup>

Oftentimes, when it was not an inhabitant of the place, merchants who came on business to Beauvais were the sufferers ; and harm to them meant, of course, more or less directly, harm to the burghers. In such cases, if the merchant brought complaint to the peers, or later to the mayor and peers — presumably because he could not get justice elsewhere — these officers “ might give him aid if he could find his wrong-doer in the city.”<sup>3</sup> Clearly, the regular seigneurial officers either could not or would not maintain the peace.

Furthermore, it seemed to be a special grievance that persons who had thus injured the burghers or merchants were able to find places of refuge ; and more particularly, that such persons were protected on occasion by the bishop, high lord of Beauvais. Hence, no doubt, the charter made it a special point to say in this connection that no one but the king or his dapifer might take a man back into the city if he had done some injury to a communer, unless he came to pay for his misdeed according to the judgment of the peers. Only, if the bishop happened to bring back such a one unknowingly, and it was shown to him, very well for that once ; but he should never take him into the city again, save by the consent of the peers.<sup>4</sup>

But such acts of violence and the protection often accorded those who committed them were not the only injuries the burghers of Beauvais objected to. Their lords frequently imposed unlawful dues ; especially, the bishop did this. So it must have been that the next articles of the charter provided a remedy for such ills.

<sup>1</sup> Art. 3 : *Et quicunque forifecerit homini qui hanc communiam juraverit, pares communie, si clamor ad eos inde venerit, de corpore suo vel de rebus suis justiciam facient, secundum deliberationem ipsorum, nisi forisfactum, secundum eorum deliberacionem, emendaverit.* My interpretation of the clause *si clamor ad eos inde venerit* — “ and cannot secure justice by the regular channels ” — may be questioned ; but in view of points which I hope to set forth in a study upon the justice of the commune at Beauvais, it seems to me correct.

<sup>2</sup> Art. 4.

<sup>3</sup> Art. 5. Also, in the same article : *et si malefactor ille ad aliquod ierit receptaculum, et mercator vel pares ad illum miserint, si ille mercatori satisfecerit, vel probare poterit se forisfactum non fecisse, satis fuerit communie.* Si vero neutrum fecerit, vindicta fieri de eo, secundum deliberationem parium, si intra villam capi poterit.

<sup>4</sup> Art. 6. This article is usually treated as not especially connected with those before it.

There should be but two millers in each mill; and if any one put in more than two, or established other bad customs in the mills, and complaint should be brought to the peers—presumably because justice was not to be had by taking the matter elsewhere—the peers might aid the complainant as they thought best.<sup>1</sup> Also, in case the bishop wished to attend the king's three courts, he might take each time three horses; and they should be had from the folk of the town, not from outlanders. That much was probably a statement of the usual rule; the real point of the burghers was stated next: but, if either the bishop himself or one of his servants should receive from a man redemption money instead of his horse, he must then take no other horse in place of the one redeemed. If he attempted it, and complaint was made to the peers, they might give aid as they saw fit. Also, any time the bishop wished to send the king fish he might take one horse.<sup>2</sup>

It will be seen that the chief means of redress sanctioned by these various provisions was force; private war, the common practice of the noble, was to be, by law now as it had been by fact, the ultimate resource also of the not-noble. Yet it would be difficult to compel all the burghers always to support the commune in such measures. Some were likely to have business relations with those whom others were complaining about, or might be dependent upon them for their holding. Or possibly such reasons as enmity against the complainant, or opportunity to curry favor, or fear to oppose so important a person as the bishop might make some members well disposed toward one against whom the peers were proceeding. It must have seemed desirable, then, to have some special guarantees of communal efficiency at such times. Hence the next provisions of the charter: No man of the commune shall give or lend of his property to the enemies of the commune while it is at war; for if he does so, he will be a perjurer. If he should be proved to have done so, justice shall be taken upon him according to the opinion of the peers. And whenever the commune goes out of the town against its enemies, no member shall speak with those enemies save by permission of the peers.<sup>3</sup>

Again, the burghers suffered injuries in still other ways: those to whom they had made loans refused to pay them back; often enough their goods were stolen; and there were troubles apparently because of the advantage some communers took over others by

<sup>1</sup> Art. 7.

<sup>2</sup> Arts. 8 and 9.

<sup>3</sup> Arts. 10, 11. It has been customary to look upon these articles as having no special connection either with those preceding or those following them. They seem to me, however, to be related to those before them in the manner here indicated, and so to form an integral part of this first division of the charter.

hanging the cloth they had for sale on higher stakes. So redress for such cases also must be provided ; with certain restrictions the commune should come to the rescue. In addition, the charter says here, if a member of the commune should make a loan to one of the city and that person should go away to some place of refuge, the master of the refuge, when he has heard complaint thereof, shall either return the lost property or drive the debtor from his premises ; if he should refuse to do either, let justice be taken upon his men, if they should be found, as the peers may see fit.<sup>1</sup> Furthermore, the communers had better put their goods under some trustworthy guard within the city, because if they should be stolen from them outside the suburbs the commune will not be responsible, unless the thief should be found inside the city.<sup>2</sup> Also, the stakes for the display of cloth should be of equal height ; and then, if a townsman should make complaint, amends will be given according to the opinion of the peers.<sup>3</sup>

So far the Beauvais charter has dealt with acts of violence, unlawful demands of seigneurs, and stealing ; in short, with crimes. It is concerned next with matters of a civil order, with rules or safeguards relating to property and business. "Moreover," these rules begin, "let every member of the commune be careful in lending to an outlander, let him be secure" — that is, no doubt, he should require his debtor to furnish security in the city — "for in this matter [of loans] no one may be seized save the debtor or his bondsman."<sup>4</sup> At this point three new provisions were inserted in the

<sup>1</sup> Art. 12. [At beginning of next note read : Art. 13 of charter of 1144.]

<sup>2</sup> Homines equidem communie nutrimentum suum intra leugam civitatis ad participationem fideli committant custodie, quia si eis extra leugam anferatur, non respondebit eis inde communia, nisi malefactor infra civitatem fuerit inventus. This clearly is a provision in regard to stealing. It is usual to say that it is not in the charter of 1182 and that Article 13 of the charter of 1182 is not the one of 1144 (Cf. Guizot, *History of Civilization*, Bohn ed., III. 414; Labande, *Histoire de Beauvais*, 90). It seems, however, that the corresponding part of the charter of Philip Augustus, that is, its Article 13, also deals with the subject of stealing. Only it omits the old injunction about a place of safeguard — there was probably no reason in the circumstances of 1182 to repeat such an injunction — and rather prescribes definitely what might be done in actual cases of stealing, just as the previous article had prescribed what might be done in cases of refusal to pay back loans. "Item," it runs, "quicumque pecuniam alicujus hominis de communia auferet et ad aliquod receptaculum perreixerit, si inde clamor ad majorem et pares venerit, de illo, si invenire poterit, et de hominibus et rebus [domini] receptaculi, justicia fiet, secundum deliberationem majoris et parium, nisi pecunia reddatur."

<sup>3</sup> Art. 14. The corresponding provision in the charter of 1182 is longer, but beyond speaking of the mayor in connection with the peers and treating the matter more explicitly there is no change : Ad extensionem quoque pannorum penditoria equali altitudine in terra affigi debent; et quicumque de penditorii vel de pannificio vel de rebus pannificio appendentibus forifacatum fecerit, si inde clamor ad majorem et pares venerit, justicia fiet, secundum deliberationem majoris et parium.

<sup>4</sup> Art. 15.

confirmation of Philip Augustus in 1182, of which two continue with the civil matters. Having prescribed caution in regard to security for loans and restriction upon the action of the commune in respect to them, the King specifies a certain limitation upon the action of the communers with reference, it would seem from the connection, to civil suits: "Besides, no communer, nor the commune as a whole, will go outside of the town to plead on any [such] case."<sup>1</sup> The second of the new civil provisions tells what shall be done, probably in cases involving anew that law of prescription in which the commune had been especially interested in its earlier years:<sup>2</sup> "If a communer should buy an inheritance and hold it for a year and a day and build upon it, and then another should claim it, no reply shall be made to him, and the buyer shall remain in peace."<sup>3</sup>

It was hardly possible, as human affairs go, that the commune should have from the beginning a perfect constitution, or that its relations with outsiders should need no defining. Difficulties must arise in regard to its organization or its internal and external relations, and if they were not removed the efficiency of the society would be lessened. So, after treating of criminal and civil matters and of the rôle of the commune in regard to them, the charter goes on, as if in a third division, to give some rules about the officers of the association and their rights and duties; about the royal support as a basis of communal authority; and finally, possibly one should say in a fourth division, about certain communal rights as regards relations with the king. The third of the new provisions added here by Philip Augustus declared that thirteen peers shall be chosen in the commune, among whom, if the peers and counselors should so advise, one or two shall be made mayors.<sup>4</sup> Probably by that time there had been trouble among the peers, and thus it became necessary to provide for undivided leadership. At all events, if this addition about what officers the commune should have was to be made, it was quite proper that it should be inserted before a provision in the old charter which assumed the existence of such officers: "The peers shall swear that they will put no one out of the commune on account of friendship and injure no one on account of enmity, and that they will deliberate justly in all cases according to their light. Also, all others [who may be members of the commune]

<sup>1</sup> Charter of 1182, Art. 16. A similar article appears in the charter to the commune of Amiens, and in connection with the civil provisions (see below, p. 652, in note 2): *De possessionibus ad urbem pertinentibus, extra urbem nullus causam facere presumat* (Article 34); edition in Giry, *Documents sur les Relations de la Royauté avec les Villes en France*.

<sup>2</sup> Cf. Labande, 55-57; but see charter of Amiens, Art. 25.

<sup>3</sup> Charter of 1182, Art. 17.

<sup>4</sup> Charter of 1182, Art. 18.

will swear that they will observe and support the decisions of the peers.”<sup>1</sup> Then follows the assurance of the king’s support, without which the commune could hardly hope to be effective: What shall be done through the peers in deliberation and securing justice, we concede and confirm.<sup>2</sup>

Finally, as to relations with outsiders, this charter speaks only of rights of the commune in its dealings with the king, and that in an addition at the end of the confirmation of Philip Augustus: We grant that the present charter shall for no cause be carried outside the city. And if any one should will to speak against it, no response shall ever be made to him.<sup>3</sup> Just what is meant appears more clearly in the corresponding assurance given by King Philip to the commune of Soissons the year before: In case the king received some injury from a communer he would seek justice in the bishop’s court, through the communal officers; he would not compel those officers to plead or show the charter outside the town.<sup>4</sup>

Thus, if we have read this Beauvais charter as it was understood in the twelfth century, it made provision first, in Articles one to fourteen, for the maintenance of law and order; second, in the articles immediately following, for certain civil matters; third, for a number of difficulties about the constitution and internal affairs of the commune; and finally, in the last article of the confirmation by Philip Augustus in 1182, for the rights of the commune in certain relations with a power of the place, the king of France. And when changes were made at the time of Philip’s confirmation, they were all perfectly logical; here and there the language was clarified,<sup>5</sup> the mayor was always spoken of in connection with the peers, the general advice given in Article 13 about security against stealing was replaced by a specific prescription as to what could be done if thefts were actually committed,<sup>6</sup> and when whole new provisions were added they were inserted at natural and proper places. In general, this Beauvais muniment seems to be far more orderly and intelligible than we moderns have thought.

Moreover, an orderly arrangement like that just observed is characteristic also of the charters of other French communes. This may be seen first in the charters most closely related to that for Beauvais; like those to Soissons, Senlis, Compiègne, Sens, and Dijon, which in several places are nearly or quite the same as the Beauvais document.

<sup>1</sup> Charter of 1144, Art. 16; of 1182, Art. 19.

<sup>2</sup> Charter of 1144, Art. 17; of 1182, Art. 20.

<sup>3</sup> Art. 21.

<sup>4</sup> Charter of Soissons, Art. 20.

<sup>5</sup> As in Arts. 14 and 19.

<sup>6</sup> See n. 2, p. 645.

The provisions of the charter for Soissons have not exactly the same grouping as those of the charter for Beauvais; nevertheless they are arranged possibly even more logically. In one as in the other the first business is with criminal matters, but in the Soissons charter the crimes dealt with first are those connected with relations between the communers and their lords; and instead of regulations about the number of millers and the exactions of the bishop in connection with his journeys to the royal courts, as at Beauvais, there were dispositions about loans of bread and meat and fish to the bishop,<sup>1</sup> and about the rights of lords in connection with their powers of justice.<sup>2</sup> Then come practically the same provisions as in the Beauvais charter in regard to violations of the peace against the interest of the communers and visiting merchants; they even wind up with the same guarantees against the return of criminals under the protection of the lord of the town.<sup>3</sup> Civil matters are treated next;<sup>4</sup> besides the question of securities for loans to outsiders, there had been trouble over outlanders who came to Soissons with bread and wine. Then follows a series of provisions<sup>5</sup> concerning the constitution and internal affairs of the commune; they include, quite logically, the usual stipulations about relations between communers and those with whom the commune was at war, which at Beauvais we found stated, not unnaturally, in connection with the provisions on criminal matters. Finally, at the end of the old charter there was a clause upon the relations between the commune and the powers of the region, the king's act being given with

<sup>1</sup> Art. 1. Evidently tailles had been levied at will and goods had been seized unlawfully in Soissons, but for the future the burghers were to be free from such exactions, save in two cases: the bishop might demand credit from the *homines* of the city for bread, meat, or fish, and also from fish-men from outside. In the first case the credit should be for three months, after which time he must pay or not be trusted again until he did; in the second, the credit should be for fifteen days, and then, if payment was not made, the foreign fish-men might take goods from the communers, wherever they could, to the value of their loan.

<sup>2</sup> Arts. 2-6. The loss of property through fines was involved in every case dealt with but one, and in that there was still a loss of property in question, though it came about in another way. The real purpose, it seems, was to determine what practices of the lords in these matters should be considered lawful. In general, fines for criminal acts, with two exceptions, should be at five *solidi*. And more particularly, failure to pay a properly required charge on circulation of goods should be at five *solidi* (Art. 2); no one should delay or cut short a journey on business in order to swear in court, he might be summoned to do that after his return (Art. 3); in complaints brought by the archdeacon the accused should not pay a fine unless there was a witness against whom he could not clear himself (Art. 4); in case a communer should violate the law concerning marriage outside his seigneurie, his fine for the profit of the injured lord should be at five *solidi* (Art. 5); and the failure of a *homo capitalis* to pay his cens on the proper day should be at five *solidi* (Art. 6).

<sup>3</sup> In Articles 7-10.

<sup>4</sup> In Articles 11 and 12.

<sup>5</sup> In Articles 13-19.

reservation of his own rights and those of the bishop and of churches and lords; while in the confirmation by Philip Augustus in 1181 this last clause was preceded by three new provisions.<sup>1</sup> But it seems doubly proper that these additions should be put in at this place, since the first of them continues the subject of the group just before it,<sup>2</sup> while the second clearly,<sup>3</sup> and the third from at least one side<sup>4</sup> relate to the general subject treated just after.

Many other charters were so much like the one to Soissons that they do not need to be more than barely mentioned here. That to Compiègne was practically the same;<sup>5</sup> likewise that to Senlis, save in the omission of the provision about mortmain and in the addition at the end of stipulations for payments to the king in return for such a concession;<sup>6</sup> the charter of Sens<sup>7</sup> seems to have been copied from that of Soissons; the same may be said also of the grant to Crépy-en-Valois,<sup>8</sup> of that to the six villages of Vailly, Condé, Chavonnes, Celles, Pargny, and Filain,<sup>9</sup> of the count of Champagne's concession to Meaux,<sup>10</sup> and also of the charter of Dijon, though this last has besides a long list of additions.<sup>11</sup> Then in turn the grants to some of these communes were copied elsewhere, that to Dijon widely.<sup>12</sup> Therefore the conclusion formed concerning the orderly arrangement of the Soissons charter applies also to similar documents for many other places.

By way of charters bearing less of formal resemblance to that of Beauvais or of Soissons, we may notice here those of Laon,<sup>13</sup>

<sup>1</sup> In Art. 20.

<sup>2</sup> Since the assurance that no one should seize a person in Soissons while the commune wished to do justice upon him would increase the efficiency of the commune.

<sup>3</sup> Prescribing that if the king receives injury from a communer he will seek justice in the court of the bishop of Soissons, through the mayor and *jurati*; he will not compel these officers to plead or show the charter outside the said court.

<sup>4</sup> "No one shall exact mortmain from a member of the commune." In other charters, like that for Laon, where this provision formed part of the original charter, it was classed with the civil regulations; but here, where it was added later, it does not seem out of place between two rules on relations with the powers of the place, since doubtless those who were most conspicuous for exacting mortmain were precisely those powers.

<sup>5</sup> *Ordonnances des Rois de France de la III<sup>e</sup> Race*, XI. 237.

<sup>6</sup> Flammermont, *Hist. des. Inst. Mun. de Senlis*, Pièces Just., II.

<sup>7</sup> *Ordonnances*, XI. 262.

<sup>8</sup> *Ibid.*, XI. 305.

<sup>9</sup> *Ibid.*, XI. 237.

<sup>10</sup> Cf. Labande, *Hist. de Beauvais*, 99.

<sup>11</sup> Garnier, *Chartes de Communes en Bourgogne*, I. 4.

<sup>12</sup> See in Garnier's work.

<sup>13</sup> Edition in Giry, *Documents*. The charter of Laon has been classed as derived largely from Soissons (Labande, *Beauvais*, 99, 101), but the four articles cited as drawn from it (7, 20, 29 and 30) are hardly of a character to be sufficient proof that they were copied from the Soissons document.

Amiens,<sup>1</sup> and Noyon.<sup>2</sup> The charter to the commune of Laon, after stating a change of the conditions on which the royal sanction was granted,<sup>3</sup> provides arrangements to aid in keeping the peace and punishing crime.<sup>4</sup> Apparently it had been common for clerics, knights, and alien merchants, when they had been injured by one of the lesser folk, to make reprisals on their own account; so that it was necessary first of all to prescribe that such matters should be dealt with by due process of law.<sup>5</sup> That done, the charter goes on to tell what should be the due process of law in such cases, first, if the wrong-doer was of the town,<sup>6</sup> second, if he was from outside.<sup>7</sup> To provide against protection of the criminal by an interested party, the same rule was laid down as at Beauvais and Soissons.<sup>8</sup> Also it was essential to provide against crimes that came up when it was not necessarily a case of a communer against a cleric, knight, or merchant.<sup>9</sup> Then there was a special item against thieving;<sup>10</sup> another about former malefactors, who with certain exceptions were accorded amnesty;<sup>11</sup> two items treat of violations of laws concerning dues to seigneurs;<sup>12</sup> and this part of the charter closes with a stipulation relating to the efficiency of the commune in performing its duties in the interests of order.<sup>13</sup> The second division treats of changing, or at least safeguarding certain regulations of the civil law—all of them relating to property matters.<sup>14</sup> In a third division several matters concerning the communal organization are disposed of.<sup>15</sup> And finally, as a fourth list of troubles, certain relations between the commurers and the powers of the town are defined.<sup>16</sup>

The charter to men of Amiens deals through twenty<sup>17</sup> of its

<sup>1</sup> *Ibid.*

<sup>2</sup> In Lefranc, *Histoire de la Ville de Noyon*, 194.

<sup>3</sup> It was altogether natural to do this at the beginning, where the king was stating the sanction itself.

<sup>4</sup> Arts. 2-19.

<sup>5</sup> Arts. 2, 3.

<sup>6</sup> Arts. 4, 5.

<sup>7</sup> Art. 6.

<sup>8</sup> Art. 7.

<sup>9</sup> Arts. 8-14. Just what persons are referred to is not altogether clear in every provision, but Art. 14 appears (when compared with later provisions in the charter) to refer to injuries to lesser folk by persons of their class from outside.

<sup>10</sup> Art. 15.

<sup>11</sup> Art. 16.

<sup>12</sup> Arts. 17, 18.

<sup>13</sup> Art. 19, providing for persons who under certain circumstances acted to promote law and order.

<sup>14</sup> Arts. 20-23.

<sup>15</sup> Arts. 24-26.

<sup>16</sup> Arts. 27-33.

<sup>17</sup> Following the usual divisions made by its editors.

customs with the general problem of prevention of crime and maintenance of order. "Every one will be faithful to his fellow and always give him just aid and counsel," it begins, evidently with regard to what follows; for forthwith it prescribes what shall be done with the thief that has been caught within the bounds of the commune;<sup>1</sup> how punishment shall be meted out to him who presumes to "disturb" either persons living within the communal jurisdiction or merchants coming to the city with their wares;<sup>2</sup> and what shall be done to communers who seize the possessions of their fellows,<sup>3</sup> to non-communers who seize the possessions of a communer,<sup>4</sup> to communers and non-communers who do bodily injury to any member of the commune,<sup>5</sup> and to communers and non-communers who insult a member of the commune.<sup>6</sup> The later customs in this part of the document all appear to be concerned with the problem of guaranteeing the effectiveness of communal action in reference to the crimes prescribed for in its earlier customs: There should be punishment for the communer who was untrue to his oath;<sup>7</sup> if the commune or its lords had suffered injury from some persons or their lords, any property of which such persons should be despoiled might be bought or sold by communers at their pleasure;<sup>8</sup> the commune was to say what should be done if one of its members took vengeance on his enemy in circumstances which prevented him from getting justice through the commune;<sup>9</sup> the commune was to proceed summarily with the man who failed to answer the summons of its officers;<sup>10</sup> aiding or communicating with enemies of the commune was forbidden;<sup>11</sup> no hired champions were to be admitted against a communer;<sup>12</sup> any one who knowingly violated the constitution of the commune should have his house destroyed, or at least should be driven from his house unless he rendered satisfaction;<sup>13</sup> at the same time the commune, presumably in measures to accomplish the ends just specified, should not meddle with the lands or fiefs of the lords;<sup>14</sup> and finally, if any one accused the commune's judges of false action and could not prove his accusation, he should be at the mercy of the king and the mayor and *scabini* for all that he had.<sup>15</sup> In a similar manner this charter lays down, in a second division, certain regulations in regard to civil relations; and in reference to cases in which administration of justice was demanded, the commune's part was in some degree defined, as was in a measure also the part of the king's

<sup>1</sup> Art. 2.

<sup>4</sup> Art. 5.

<sup>7</sup> Art. 12.

<sup>10</sup> Art. 15.

<sup>13</sup> Art. 18.

<sup>2</sup> Art. 3.

<sup>5</sup> Arts. 6-9.

<sup>8</sup> Art. 13.

<sup>11</sup> Art. 16.

<sup>14</sup> Art. 19.

<sup>3</sup> Art. 4.

<sup>6</sup> Arts. 10, 11.

<sup>9</sup> Art. 14.

<sup>12</sup> Art. 17.

<sup>15</sup> Art. 20.

officers.<sup>1</sup> In a third division this charter deals with various internal difficulties of the commune ;<sup>2</sup> and finally, in a fourth, various additions were made.<sup>3</sup>

The charter to the communers of Noyon<sup>4</sup> is short and exceptionally hard to understand. But when it is approached with the key found in reading some of those that are longer, it appears that ten out of its sixteen customs deal with crimes, including on one hand violations of law in connection with relations with the bishop, lord of the town,<sup>5</sup> and on the other actions involving violence to persons and property.<sup>6</sup> Also, the next four customs concern property rights under certain circumstances ; and the last two are additions.

<sup>1</sup> Arts. 21-35. To take them in order, it is evident from only reading them that 21 to 26 relate to matters of civil law ; so also 27 and 28 (which clearly go together), though in them there is some provision for communal justice. Then, just as the articles on crimes concluded with prescriptions as to communal powers, so here in Articles 29 to 33 it would seem that the object in view was to aid in securing proper justice in civil suits : though the commune's part was in general rather taken for granted than explicitly defined, at least bribery of its judicial officers was provided against (Arts. 29 and 30, which clearly go together), and the mayor was to be appealed to if the provost refused justice (Article 31) ; and certain procedure was prescribed apparently for the recovery of stolen property and reasonable judicial protection for him who purchased such property from a robber unknowingly (Articles 32 and 33). Finally, it is clear that Articles 34 and 35 are of the civil class. Is it possible that they were inserted some time after the others were written ? It would seem that Article 34 contains the same point as the first (number 16) of the articles added to the Beauvais charter when it was confirmed by Philip Augustus in 1182. And Article 35, if it is not an addition, might be expected to be ranged with Articles 21 to 23.

<sup>2</sup> Arts. 36-45.

<sup>3</sup> Arts. 46-52.

<sup>4</sup> Lefranc, *op. cit.*, 194-196.

<sup>5</sup> Articles 1-5. Those that present special difficulties read as follows :

1. Pro quacumque commonitione quam fecerint, sive pro banno, sive pro fossato, vel firmatione ville, neque episcopus neque castellanus habent ibi aliquid justicie vel implacitationis, sed cujuscumque sint ordinis hii qui ad eumdem ordinem vel ministerium pertinent, vinum vel tale aliquid ab eis accipient.

2. Omnes qui in civitate domos habent, preter clericos et milites, debent excubias et adjutorium civitatis et consuetudines communionis.

3. Si commonitio facta fuerit et quispiam remanserit, vel quia claudus est, vel infirmus, vel ita pauper ut pro custodienda familia sua, uxore scilicet vel parvulis in infirmitate positis, domi eum oporteat remanere, vel si minutus fuerit seque nescisse commonitionem jurare voluerit, nulla culpa tenebitur.

4. Quodcumque adjudicaverint jurati, extra civitatem non poterunt protrahi aut invitari.

Article 2, though it may seem to have no connection with the particular subject of either Article 1 or Article 3, is really incidental, I think, to one or the other, preferably the latter. Both of them have to do with matters connected with the summons by the authorities above the communers, and Article 2, it would appear, tells just what persons are concerned in the summons. In like manner, Article 4 seems to be incidental to Article 3, the rule it expresses being expected to insure communal efficiency in regard to the matter treated in Article 3.

<sup>6</sup> There is difficulty also about some of these :

Thus, if the foregoing analyses are correct, it would appear that the communal charters here in question are hardly the disordered compositions such documents have usually been considered. On the contrary, they seem to have been put together as if by some plan. They begin and finish successively the several matters with which they are concerned. The distribution of their various provisions may differ considerably from one charter to another, but in each instance there is some logical general arrangement. If certain provisions, like those to assure effectiveness of the communal action in criminal matters, are sometimes with one group and sometimes with another, in any case they never seem out of place; they have a double character which makes them fit in naturally at more than one point. Even when additions are made in confirmations, they are put in in appropriate connections, either inserted with the group with which they might naturally have appeared at the beginning or put at the end of the original document. In short, these communal charters, far from being deformed and unreasoned, proceed about their business in an orderly and logical manner.

But more than this, such conclusions on the charters, especially when the course by which they have been reached is considered, give some rather clear information about the communes themselves. To begin with, we have endeavored, while analyzing the charters, to keep ourselves consistently in the environment of the communers and to look at them and their world as they did. At every step we have asked whether this and that point mentioned by the charters should not rightly be connected with certain conditions of the place and time which the men of the commune naturally wished to change. We have constantly raised the question whether these folk were not capable of seeing several particular features of their situation in such a way as to consider them of the same general character; we have gone on the hypothesis that they were able to distinguish, for example, between ways of violating the law and proposals for the reform of the communal organization. Then,

6. Si quis vulneraverit vel occiderit quemquam intra communionem, jurati facient vindictam, forisfactura erit episcopi et castellani sicut prius.
7. Si quis vult esse in communione, non recipiatur ab aliquo solo, sed presentibus juratis, et pecunia quam dederit sub eorum testimonio accipiatur.
9. Si episcopus implacitaverit aliquem de communione pro aliqua forisfactura, vel pro banno, non poterit convinci vel appellari per aliquem servientem ejus, nisi alium approbatorem adduxerit, qui si defuerit sacramento se purgabit.
10. Nullus, absente clamatore, nisi injuria coram scabinis vel juratis fuerit ostensa, respondere habebit.

Article 7, I take it, must be intimately connected with Article 6. Its full meaning, thus taken, may not be clear, but it seems natural that there should be some special control of the membership of an organization which was to secure the benefit arranged for in Article 6. Article 10 may easily be understood to be a continuation of Article 9.

closely connected with this, we have disregarded the division of the charters into articles, save for strictly reference purposes, in much the same way that modern editors of the Bible have discarded its old verses. This way of dividing the matter of such documents is of course a device of translators and editors to make it more convenient to refer to this or that custom of a charter. But it is to be feared that these articles, though created with a worthy motive, do not always correspond to the real points that the original writer of the documents had in mind. They seem, indeed, to have had considerable influence in leading — or rather misleading — us to look upon the several so-called articles of a charter as describing — or rather not describing — so many separate and distinct matters in which the commune was interested. At all events the arrangement into articles has been associated with a scrappy analysis of the charters. For example, how long has it been said, as if the original writer of the document would have it so, that Articles 1, 8, 11, and 21 deal with one matter ; 3, 5, 10, and 16 with another ; 2, 4, 7, and 15 with still another ? At the same time, also, we have endeavored to free ourselves from the assumptions of many earlier students, whose political theories led to a similar analysis : the communes were of course town governments, such as we should have now, and these charters, being their fundamental laws, describe in, say, Articles 1, 9 and 14 the law upon one subject ; in Articles 5, 8, 16, 22, and 37 the law upon another ; and so on. Thus, then, we have come not only to what would seem more natural and reasonable views of the charters, but also to a more definite idea of what the communes were really trying to do. We may say rather explicitly what general objects at least many of them had in hand, at all events in so far as those objects are reflected in their charters.

In the first place, they aimed to provide against acts of violence and unlawful demands of seigneurs, and to insure safety of property ; in short, to promote law and order by arranging for efficient prevention and punishment of crimes. Second, they aimed to establish, change, or guarantee certain regulations in the field of civil relations. Third, they wished to make the commune a really effective organization, able, under all the circumstances, to accomplish what it was designed to accomplish. And fourth, in some instances they would regulate relations between the commune or its members on one side and the nobles and clergy or various lords and higher powers on the other. And foremost among these various purposes was the promotion of law and order. So it was, doubtless, that the first and largest — sometimes by far the largest — part of their charters was

devoted to this subject. The primary business in each of them was not exactly—as we have so often heard—to proclaim the solidarity of the commune and the mutual aid that its members were always to give each other, but to make of a certain association which had been formed for mutual aid an effective agent in securing the punishment and prevention of violations of the law. Some charters, as those to Beauvais and Amiens, began with injuries to persons or property; others, like those to Soissons and Noyon, opened with provisions concerning the violation of law by seigneurs in the way of exactions which the custom did not permit. But in either case, injuries or exactions, it was a question of punishing and preventing crimes, and through that of promoting peace and order.

Thus it has been seen what many of the communes were trying to do in the towns in which they were, what place they had with reference to their immediate surroundings. At the same time may it not also be seen more clearly than heretofore on what ground these same bodies maintained close relations with the king? It is said that Philip Augustus gave his support to such organizations for political and financial reasons; by these means he could strengthen himself in his old domain, gain something against opposing lords in annexed regions, and increase the funds of a hard-pressed treasury. All of this, doubtless, is true; indeed, private advantage was probably the immediate determining factor on both sides. Yet does it not appear, in the instances we have observed, that the broader common ground on which king and communes met was the promotion of peace? Maintenance of the law and advancement of justice certainly formed one of the paths of royal progress, possibly we should say its chief path; and whether work of this order was looked upon in a private or a public light, it was service which the king was more and more able to give and which many groups of people were glad to have and were more and more willing to make some return for. So it was not unnatural that at Beauvais, Soissons, Laon, Amiens, and numerous other places where justice was evidently not to be had by the regular channels the king should give his support to associations which were aiming especially to keep the peace.

Finally, and in a more general field, thus to know more definitely the rôle of a considerable number of the French communes may add at least another candle to those flickering lights by which we try to make out the real features of medieval democracies—to read, as it were, their thoughts and inner purposes. They were hardly setting up organizations which we of the Anglo-Saxon world should call a town government. It must be remembered that they were all born in the feudal régime, and that they always breathed its life;

they pursued its ends, they acted under its necessities, and they used its means. Thus they were struggling, like all about them, to further various private interests ; they made all possible bargains and arrangements — with bishops, chapters, lords, kings, with whoever was at hand — to conserve their persons, their possessions, and their business ; and to do all these things more successfully they had formed, here and there, private mutual-benefit associations. In some places these associations wished to do one thing, in other places something else. In the towns we have studied here they wished especially to help keep the peace and maintain the law ; and in doing so they were doubtless acting less for the town as such than for the private interests of a greater or less number of their members.

EARLE WILBUR DOW.